ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

What Should You Do When A Customer Makes an Allegation of an Error or Omission?

We KNOW E&O for Insurance Agents

In the event that an agency customer had a claim denied by their carrier, or for which there were not enough limits to cover the loss, the customer may decide to contact your agency and allege they either had the wrong coverage or the coverage they had in place had insufficient limits. If this occurs, there are several things that you need to do – and practices to avoid – to help ensure you do not compromise your E&O coverage:

Steps to take to ensure that you do not compromise your E&O coverage:

Educate your staff.

They should know what circumstances could result in a claim against the agency. You do not want them to wait until the client specifically asserts a claim if they are aware of an issue. Determine who at the agency should review any potential issues and report them to the E&O carrier, if needed.

Report incidents and claims in a timely manner.

Incidents are facts that are made known to you that may result in an E&O claim. An E&O claim is a demand for money or services. It is important that you notify your E&O carrier if there is an incident or claim as failure to do so may impact your coverage.

Report a subpoena for a customer's file to your E&O carrier.

A subpoena for a customer's file is a fact-finding endeavor. Not all such subpoenas result in an E&O claim being pursued, but having legal counsel review the request to ensure the response is appropriate may prevent additional issues from arising. If your E&O policy is with a Utica National company, and you receive a subpoena for a customer file, defense counsel may be assigned to assist you in the response, if necessary.

When asked, advise your customers that the issue has been reported to your carrier.

Do not discuss issues pertaining to an open claim with the claimant or make any promises about the E&O carrier paying for the loss. Continue speaking with this customer about other insurance matters, and provide them with the same service you would if there was not a claim.

Never make any admissions – including apologies, which may be construed as an admission.

Admissions may be used against you if the matter is litigated. For example, if a client calls to report a claim and you realize the agency may have made an error, such as leaving a property or vehicle off a policy, tell them you will look into it – and then discuss it with management and your E&O carrier before further discussion with the client. Your E&O carrier can provide guidance on how to address the matter with the client while mitigating your exposure to the extent possible.

Continued

Things you should avoid when a customer makes an allegation of an error or omission concerning, or tenders a claim to, your agency:

Never make any admissions. This includes apologies, which may be construed as an admission.
Admissions may be used against you if the matter is litigated. Simply state that you will take the customer's information and report the matter to your E&O carrier for review.

Never attempt to "fix" the issue.
Similar to making payments, providing services or advice to attempt to "fix" the issue, without first speaking to an E&O Claim Specialist, may result in exacerbating the situation. Submit the claim or incident and discuss it with an E&O Claim Specialist before proceeding.

Never make a payment to a customer on a claim prior to discussing the matter with your E&O carrier.
Making payments, yet another form of admission, may cause you issues if the customer intends to pursue you despite the payment – and may have serious repercussions under your E&O policy as a breach of policy conditions. If you get a demand for money or services from your customer or a third party, report it immediately to your E&O carrier's Claim Department so the E&O Claim Specialists can review the matter and provide you with the appropriate assistance.

Never delay reporting the matter to your E&O carrier.
Failure to report a claim per your individual policy terms may result in a disclaimer of coverage.

Do not jeopardize your E&O coverage because you think a claim will be within your deductible or you believe the hassle of reporting the claim will not be worth the effort. The potential for claims to escalate is great, and the time it takes to report a claim and discuss the facts with a Claim Specialist is insignificant compared to the time and expense of a litigated E&O claim.

If you are an Agents' Errors & Omissions policyholder with the Utica National Companies and need to report the claim, please complete the fillable E&O First Report – Notice of Claim or Incident form and email it to the address at the top of the form.

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